No. 15811

United States
Court of Appeals
for the Ninth Circuit

MONTE G. MASON,

Appellee,

vs.

ERNEST UTLEY, Trustee in Bankruptcy of the Estate of Monte G. Mason, Also Known as M. G. Mason,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California Central Division

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—1-31-58

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

INDEX PAGE

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM STRONG,
232 North Canon Drive,
Beverly Hills, California.

For Appellee:

WILLIAM J. TIERNAN,
215 West 7th Street,
Los Angeles 14, California.

In the United States District Court, Southern District of California, Central Division

No. 76001

PETITION IN INVOLUNTARY BANKRUPTCY

In the Matter of

MONTE G. MASON, Also Known as M. G. MASON,

Alleged Bankrupt.

To the Honorable Leon R. Yankwich, Judge of the District Court of the United States for the Southern District of California:

The verified petition of Erwin P. Werner of Los Angeles, California, and U. S. Credit Bureau, Inc., a California Corporation, of Los Angeles, California, respectfully represents to the Court:

I.

That Monte G. Mason, also known as M. G. Mason, of 3210 Oak Dell Lane, Studio City, California, has resided at the above address and has had his domicile within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

II.

That the said Monte G. Mason, also known as M. G. Mason, owes debts to the amount of $1,000 or more and is not a wage earner or a farmer but is

engaged in the business of oil leasing and promotional oil activities and in the drilling and exploration for oil. [2*]

III.

Your petitioners are creditors of the said Monte G. Mason, also known as M. G. Mason, having provable claims against him, fixed as to liability and liquidated in amount, amounting in the aggregate in excess of the value of securities held by them to $500, or more. The nature and amount of your petitioners' claims are as follows:

A. The petitioner Erwin P. Werner holds an unsatisfied judgment against the alleged bankrupt entered August 25, 1954, in the Superior Court of the State of California for the County of Los Angeles, Case No. 620670 in the amount of $8,565.18, together with interest, to date.

B. The petitioner, U. S. Credit Bureau, Inc., holds an unpaid judgment as assignee of Esther Ann Cotton, rendered on or about September 25, 1951, in the Municipal Court of Los Angeles County, Case No. 1041792, in the amount of $2,-557.14, plus interest to date.

C. The petitioner, U. S. Credit Bureau, Inc., holds an unpaid judgment as assignee of Kay Sims, rendered on or about March 20, 1952, in the Municipal Court of Los Angeles County, Case No. 767, in the amount of $1,109.79, plus interest to date.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

IV.

That within four months last preceding the filing of this petition the said Monte G. Mason, also known as M. G. Mason, committed an act or acts of bankruptcy in that he did heretofore to wit while insolvent:

A. On December 6, 1956, the alleged bankrupt was examined in supplementary proceedings before the Honorable Clarence Johns, Commissioner in and for the Superior Court of Los Angeles County. That in the course of his testimony the alleged bankrupt concealed or permitted to be concealed property and interests in property, both real and personal with intent to hinder, delay, and defraud his creditors.

B. That the alleged bankrupt did in connection with an Order of Restitution made by the Los Angeles Superior Court in connection with that case entitled People of the State of California vs. Mason, [3] No. 112872, pay to the Probation Department of Los Angeles County, the sum of $300.00 on or about the first day of October, 1956; November, 1956, and December, 1956. That said payment constituted a preferential transfer as defined in Subdivision A of Section 60 of the Bankruptcy Act, same being made on behalf of antecedent creditors of the alleged bankrupt, whose names are presently unknown to these petitioners.

C. Petitioners allege upon information and belief that the aforesaid alleged bankrupt committed

an act of bankruptcy by conveying, transferring, concealing, removing, or permitting to be concealed or removed certain portions of his property, both real and personal, to his wife with intent to hinder, delay, or defraud his creditors within the four months' period preceding the filing of this petition. That the exact nature and times when these acts occurred are presently unknown to your petitioners and leave will be sought to amend this petition when the same are discovered.

D. Petitioners allege upon information and belief that the aforesaid alleged bankrupt committed an act of bankruptcy by conveying, transferring, concealing, removing, or permitting to be concealed or removed, certain of his properties to a corporation or corporations known as Americol Petroleum, Inc., a Colorado corporation; Modco, Inc., a Nevada corporation, and M.G.M Petroleum, Inc., a Neveda corporation, with intent to hinder, delay, or defraud his creditors within the four months' period preceding the filing of this petition. That the exact nature and times when these acts occurred are presently unknown to your petitioners and leave will be sought to amend this petition when the same are discovered.

E. Petitioners allege that the aforesaid alleged bankrupt has committed other and divers acts of bankruptcy, the same being presently unknown to your petitioners. That as and when same are ascer-

tained, leave will be sought to amend this complaint to include said acts. [4]

Wherefore Your Petitioners Pray that service of this petition with a subpoena may be made upon Monte G. Mason also known as M. G. Mason, as provided in the Bankruptcy Act and that he may be adjudged by the Court to be a bankrupt within the purview of said act.

/s/ ERWIN P. WERNER,
Petitioner.

U. S. CREDIT BUREAU, INC.,
Petitioner.

By /s/ GEORGE THORESON,
Vice President.

/s/ WILLIAM J. TIERNAN,
Attorney for Petitioners. [5]

State of California,
County of Los Angeles—ss.

Erwin P. Werner being duly sworn, deposes and says: That he is a petitioner in the within and above-entitled action; that he has read the within and foregoing Petition in Involuntary Bankruptcy and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

/s/ ERWIN P. WERNER.

Subscribed and sworn to before me this 21st day of December, 1956.

[Seal] /s/ WILLIAM J. TIERNAN,
Notary Public in and for Said County and State.

State of California,
County of Los Angeles—ss.

George Thoreson, being sworn says: That he is the vice president of the U. S. Credit Bureau, Inc., a corporation, the above-named petitioner, and is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing Petition in Involuntary Bankruptcy and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief and as to those matters he believes it to be true.

/s/ GEORGE THORESON.

Subscribed and sworn to before me this 21st day of December, 1956.

[Seal] /s/ ROGER K. LATKY,
Notary Public in and for Said County and State.

My Commission Expires April 9, 1960. [6]

[Endorsed]: Filed December 27, 1956. [7]

[Title of District Court and Cause.]

AMENDED PETITION IN INVOLUNTARY BANKRUPTCY

To the Honorable Leon R. Yankwich, Judge of the District Court of the United States for the Southern District of California:

The verified petition of Erwin P. Werner of Los Angeles, California; U. S. Credit Bureau, Inc., a California corporation, of Los Angeles, California, and Helen Pantaleoni of Los Angeles, California, respectfully represents to the Court:

I.

That Monte G. Mason, also known as M. G. Mason, of 3210 Oak Dell Lane, Studio City, California, has resided at the above address and has had his domicile within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

II.

That the said Monte G. Mason, also known as M. G. Mason, owes debts to the amount of $1,000 or more and is not a wage earner or a farmer but is engaged in the business of oil leasing and promotional oil activities and in the drilling and exploration for oil. [8]

III.

Your petitioners are creditors of the said Monte G. Mason, also known as M. G. Mason, having

provable claims against him, fixed as to liability and liquidated in amount, amounting in the aggregate in excess of the value of the securities held by them to $500.00 or more. The nature and amount of your petitioners' claims are as follows:

A. The petitioner, Erwin P. Werner, holds an unsatisfied judgment against the alleged bankrupt entered August 25, 1954, in the Superior Court of the State of California for the County of Los Angeles, Case No. 620670, in the amount of $8,565.18, together with interest, to date.

B. The petitioner, U. S. Credit Bureau, Inc., holds an unpaid judgment as assignee of Esther Ann Cotton, rendered on or about September 25, 1951, in the Municipal Court of Los Angeles County, Case No. 1041792, in the amount of $2,-557.14, plus interest to date.

The petitioner, U. S. Credit Bureau, Inc., holds an unpaid judgment as assignee of Kay Sims, rendered on or about March 20, 1952, in the Municipal Court of Los Angeles County, Case No. 767, in the amount of $1,109.79, plus interest to date.

C. The petitioner, Helen Pantaleoni, holds an unpaid judgment against the alleged bankrupt rendered on or about January 30, 1953, in the Superior Court of Los Angeles County, Case No. 598741, in the amount of $6,000.00, together with interest at the rate of 7% per annum from December 10, 1951, until paid, and costs of suit.

IV.

That within four months last preceding the filing of this petition the said Monte G. Mason, also known as M. G. Mason, committed an act or acts of bankruptcy in that he did heretofore to wit while insolvent:

A. On December 6, 1956, the alleged bankrupt was examined in supplementary proceedings before the Honorable Clarence Johns, Commissioner in and for the Superior Court of Los Angeles County. That in the course of his testimony the alleged bankrupt concealed or permitted to be concealed property and interests in property, both real and personal with intent to hinder, delay, and defraud his creditors. That the bankrupt testified that he had no interest in real estate and that in truth and in fact the bankrupt concealed a community interest in a residence located at 3210 Oak Dell Lane, Studio City, California, and in addition, the alleged bankrupt concealed in his testimony an interest in an oil well located in the City of Huntington Beach on 16th Street of that city. That the bankrupt testified falsely that he had no interest in six automobiles which are used and operated by members of his family, the title to four of which stand in his wife's name, one Jeanne R. Mason, the other two of which are in the names of children. That the bankrupt concealed an interest in a private airplane, testifying falsely that he had no interest therein and that the proprietary interest in said airplane belonged to his wife; whereas, in truth and

in fact said airplane is community property. That the bankrupt concealed his interest in a bank account, title to which is in the name of his wife, Jeanne R. Mason, which said bank account has been the receipt and depository of community funds and has been used to maintain, support, and pay the expenses of the alleged bankrupt in these proceedings. That the bankrupt concealed his interest and testified falsely concerning his interest in M.G.M Petroleum, Inc., a Neveda Corporation, approximately one million shares of which are held in the name of his wife, the aforesaid Jeanne R. Mason. That said stock was and is community property and was and is controlled and voted by the alleged bankrupt. That the bankrupt falsely testified that there was no community property in existence owed by himself and the said Jeanne R. Mason.

B. That the alleged bankrupt did in connection with an Order of Restitution made by the Los Angeles Superior Court on or about January 5, 1949, in connection with that case entitled, "People of the State of California vs. Mason," No. 112872, pay to the Probation [10] Department of Los Angeles County, the sum of $300.00 on or about the first day of October, 1956; November, 1956, and December, 1956. That said payment constituted a preferential transfer as defined in Subdivision A of Section 60 of the Bankruptcy Act, same being made on behalf of antecedent creditors of the alleged bankrupt. That said creditors, their names and the amount of their claims are as follows:

Ardis Brink	$1,500.00
Frank Enders	$1,500.00
John A. Haslett	$1,500.00
Liela A. Lowery	$1,500.00
Lloyd F. Dunn	$1,500.00
C. R. Bertrand	$1,500.00
Hayland G. Small	$1,500.00

C. Petitioners allege that the aforesaid alleged bankrupt has committed other and divers acts of bankruptcy, the same being presently unknown to your petitioners. That as and when same are ascertained, leave will be sought to amend this complaint to include such acts.

Wherefore, your petitioners pray that service of this petition with a subpoena may be made upon Monte G. Mason, also known as M. G. Mason, as provided in the Bankruptcy Act and that he may be adjudged by the Court to be a bankrupt within the purview of said Act.

/s/ ERWIN P. WERNER,
Petitioner.

U. S. CREDIT BUREAU, INC.,
Petitioner.

By /s/ GEORGE THORESEN,
Vice President.

/s/ HELEN PANTALEONI,
Petitioner.

/s/ WILLIAM J. TIERNAN,
Attorney for Petitioners. **[11]**

State of California,
County of Los Angeles—ss.

Erwin P. Werner, being duly sworn, deposes and says: That he is a petitioner in the within and above-entitled action; that he has read the within and foregoing Petition in Involuntary Bankruptcy and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

/s/ ERWIN P. WERNER.

Subscribed and sworn to before me this 15th day of February, 1957.

[Seal] /s/ WILLIAM J. TIERNAN,
Notary Public in and for Said
County and State.

State of California,
County of Los Angeles—ss.

George Thoresen, being sworn deposes and says: That he is the vice president of the U. S. Credit Bureau, Inc., a corporation, the above-named petitioner, and is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing Petition in Involuntary Bankruptcy and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his in-

formation or belief and as to those matters he believes it to be true.

/s/ GEORGE THORESEN.

Subscribed and sworn to before me this 8th day of March, 1957.

[Seal] /s/ ROGER K. LATKY,
Notary Public in and for Said
County and State. [12]

State of California,
County of Los Angeles—ss.

Helen Pantaleoni, being duly sworn, deposes and says: That she is a petition in the within and above-entitled action; that she has read the within and foregoing Petition in Involuntary Bankruptcy and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information and belief, as to those matters that she believes it to be true.

/s/ HELEN PANTALEONI.

Subscribed and sworn to before me this 21st day of February, 1957.

[Seal] /s/ C. E. PORTER,
Notary Public in and for Said
County and State.

My Commission Expires April 29, 1957.

[Endorsed]: Filed March 11, 1957. [13]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS PETITION AND FOR MORE DEFINITE STATEMENT

To Erwin P. Werner of U. S. Credit Bureau, Inc., and Helen Pantaleoni, and to William J. Tiernan, their attorney:

Please Take Notice that on the 11th day of April, 1957, at 10:00 o'clock a.m. of that day, or as soon thereafter as counsel can be heard, before the Honorable David P. Head, Referee in Bankruptcy, the alleged bankrupt herein will move the above-entitled Court for an order dismissing amended petition on file herein on the ground that it fails to state a claim against the alleged bankrupt upon which relief can be granted and for a further order, in the event the motion to dismiss is not granted, that the petitioners be ordered to furnish a more definite statement of the nature of their claims as set forth in the petition because the said petition is so vague and ambiguous that the alleged bankrupt should not reasonably be required to prepare a responsive pleading on the ground that paragraph IV A alleges in vague and general terms only that the alleged bankrupt concealed or permitted to be [14] concealed property and interests in property with intent to hinder, delay and defraud his creditors. Said subdivisions of paragraph IV do not fully apprise the alleged bankrupt of the specific facts concerning the alleged disposition of said

assets made by the alleged bankrupt and the specific property alleged to be concealed or when such concealment allegedly took place.

This motion will be based upon the amended petition in involuntary bankruptcy heretofore filed herein and upon all other papers and proceedings heretofore amended.

Dated April 1, 1957.

/s/ LAURENCE J. RITTENBAND,
Attorney for Alleged Bankrupt. [15]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT

I.

The facts relied upon to establish concealment in paragraph IV A must be set forth in the petition fully and give the dates when the bankrupt allegedly concealed his assets.

Providence Box and Lumber Co. v. Goodrich Daniell Lumber Corp., 805 F. Supp. 61;

In re Heltman-Thompson Co., 83 F. Supp. 156;

Matter of Myers, 31 F. Supp. 636;

In re Rosenblatt & Co., 193 F. 638;

In re Condon, 209 F. 800;

Matter of Morosco Holding Co.,
296 F. 516;

Conway v. German,
166 F. 67.

II.

The facts stated in paragraph IV B do not constitute a preferential transfer under the Bankruptcy Act.

Collier on Bankruptcy (14th Ed.) Vol. 3, p. 558 (and [16] cases cited therein).

Dated: April 1, 1957.

/s/ LAURENCE J. RITTENBAND,
Attorney for Alleged
Bankrupt.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 2, 1957. [17]

[Title of District Court and Cause.]

ORDER ON MOTION TO DISMISS

This matter came on regularly to be heard before the undersigned Referee in Bankruptcy at his courtroom in the Federal Building, Los Angeles, California, pursuant to notice thereof.

The alleged bankrupt appeared through his attorney, Laurence J. Rittenband, the Petitioning Creditors appeared through their attorney, William J. Tiernan.

Now, argument of counsel having been heard, good cause appearing, the court makes the following order:

It Is Ordered that Paragraph IV.A. of the Amended Petition states a valid Act of Bankruptcy and as to this paragraph the motion to dismiss be and the same hereby is denied.

It Is Further Ordered that as to Paragraph IV. B. of the Amended Petition, ruling thereon is reserved until the trial of the cause.

It Is Further Ordered that the motion for a more definite statement be and the same is denied.

Dated: April 23, 1957.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed April 23, 1957. [19]

[Title of District Court and Cause.]

NOTICE OF RULING

To Monte G. Mason and to His Attorney, Laurence J. Rittenband:

You will please take notice that on the 16th day of April, 1957, at 2:00 p.m. the Court made its order denying your motion to dismiss and for a more definite statement, and gave you twenty days

to answer the amended petition in involuntary bankruptcy.

/s/ WILLIAM J. TIERNAN,

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 23, 1957. [20]

[Title of District Court and Cause.]

ANSWER TO INVOLUNTARY BANKRUPTCY PETITION

To David B. Head, Referee in Bankruptcy:

An amended petition having been filed in the above court on or about March 11, 1957, praying that your respondent, the alleged bankrupt above named, be adjudged a bankrupt, your respondent now appears and answers the said amended petition as follows:

I.

Respondent admits the allegations contained in paragraphs I and III of the amended petition.

II.

Respondent denies each and every allegation contained in paragraph II of the amended petition, except that he admits that he owes debts to the amount of $1,000.00 or more and that he is not a farmer and except that he is engaged in the business of drilling and exploration for oil. [22]

III.

Respondent denies each and every allegation contained in paragraph IV of the amended petition,

except that he admits that he was examined in supplementary proceedings before the Honorable Clarence E. Johns, Commissioner, in and for the Superior Court of Los Angeles County, and that in connection with an order of restitution made by the Los Angeles Superior Court on or about January 5, 1949, in connection with a case entitled "People of the State of California vs. Mason," No. 112872, paid in the Probate Department of Los Angeles County various sums pursuant to the said order of restitution.

For a Separate, Distinct and Affirmative Defense

IV.

Respondent alleges that he committed no acts of bankruptcy within four (4) months from the time of the filing of the amended petition.

For a Further Separate and Affirmative Defense

V.

The amended petition does not state facts sufficient to constitute a cause of action against the alleged bankrupt.

Wherefore, your respondent prays that a hearing may be had on said amended petition and this answer and that the issue presented thereby may be determined by a jury.

/s/ LAURENCE J. RITTENBAND,
Attorney for Alleged
Bankrupt. [23]

State of California,
County of Los Angeles—ss.

I, Monte G. Mason, also known as M. G. Mason, respondent named in the foregoing answer, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

/s/ MONTE G. MASON.

Subscribed and sworn to before me this 22nd day of May, 1957.

[Seal] /s/ MORRIS KASTLE,
Notary Public in and for Said County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 23, 1957. [24]

[Title of District Court and Cause.]

NOTICE OF MOTION TO SET ASIDE ADJUDICATION OF BANKRUPTCY AND ORDER TO FILE SCHEDULES

To Erwin P. Werner, U.S. Credit Bureau, Inc., and Helen Pantaleoni, and to William J. Tiernan, their attorney:

Please Take Notice that on Thursday, June 6, 1957, at 10:00 o'clock a.m. of that day, or as soon thereafter as counsel may be heard, before the Honorable David P. Head, Referee in Bankruptcy,

the alleged bankrupt therein will move the above-entitled court for an order setting aside the Adjudication of Bankruptcy filed in the above-entitled matter on May 20, 1957, and to set aside the Order to File Schedules heretofore filed on May 20, 1957, on the ground that said adjudication of bankruptcy was entered through the excusable failure of the alleged bankrupt to file a timely answer to the amended petition hitherto filed, as more particularly appears from the annexed affidavit of Laurence J. Rittenband.

This motion will be based upon the annexed affidavit of Laurence J. Rittenband, the proposed answer to the amended petition [26] and upon all proceedings heretofore had herein.

Dated: May 22, 1957.

/s/ LAURENCE J. RITTENBAND,
Attorney for Alleged
Bankrupt. [27]

AFFIDAVIT OF LAURENCE J. RITTENBAND

Laurence J. Rittenband, being first duly sworn, deposes and says:

That he is the attorney for the alleged bankrupt and is fully familiar with all the papers and proceedings heretofore had herein.

On May 21, 1957, affiant received certified copies of Adjudication of Bankruptcy and Order to File Schedules. The Adjudication of Bankruptcy sets forth that Monte G. Mason, also known as M. G. Mason, was adjudicated a bankrupt because of the

fact that no timely answer had been filed by him. Prior to the expiration of the twenty (20) day period during which the alleged bankrupt was required to file an answer after motion to dismiss the amended complaint was denied, affiant entered into negotiations with the attorney for the petitioning creditors for a possible settlement of the obligations owed by the alleged bankrupt to his creditors. The proposal which was made to the attorney for the petitioning creditors related to the transfer of certain stock owned by the alleged bankrupt's wife in M.G.M. Petroleum Co., Inc., to said creditors. Under date of May 14, 1957, affiant received a letter from Mr. William J. Tiernan, the attorney for the petitioning creditors, a copy of which is attached hereto as "Exhibit A." Upon receipt of the letter of May 14, 1957, to wit, on May 15, 1957, affiant sent a copy of Mr. Tiernan's letter of May 14, 1957, to the alleged bankrupt with the request that the information desired by Mr. Tiernan in his letter of May 14, 1957, be forwarded to me.

Affiant was in the process of preparing the answer to the amended petition, after receipt of the letter from Mr. Tiernan dated May 14, 1957, when the Adjudication of Bankruptcy and the Order to File Schedules were received by affiant. [28]

Affiant has advised the alleged bankrupt that he has a meritorious defense to the amended petition in bankruptcy on the ground that no acts of bankruptcy could be proved against him.

Attached hereto is proposed answer of alleged

bankrupt which affiant requests be filed if the within motion is granted.

Wherefore, affiant prays that because of inadvertence and excusable neglect, the answer to the petition had not been filed and that an order be entered herein vacating the adjudication of bankruptcy and the order to file schedules and that the alleged bankrupt be permitted to file his answer to the amended petition attached hereto.

/s/ LAURENCE J. RITTENBAND,

Subscribed and sworn to before me this 22nd day of May, 1957.

[Seal] /s/ MORRIS KASTLE,
Notary Public in and for Said County and State.

Affidavit of Service by Mail attached. [29]

EXHIBIT "A"

William J. Tiernan
Attorney at Law
Suite 612
215 West Seventh Street
Los Angeles 14, California

May 14, 1957.

Mr. Laurence J. Rittenband
210 West Seventh Street
Los Angeles 14, California

Re: Monte G. Mason

Dear Mr. Rittenband:

The proposal that you discussed with me concerning the issuance of stock in M.G.M. Petroleum

Company, Inc., is definitely of interest to my clients.

Before further consideration may be given to this we need to have the balance sheet and operating statement of the company as well as a description of its capital structure.

If this is agreeable, please return these documents together with a precise offer and I will take it up with my clients. In the meantime, please file your answer to the amended petition and please advise me of an agreeable date for the production of Mrs. Mason or I will assume that you prefer to have me subpoena her for her examination.

Very truly yours,

/s/WILLIAM J. TIERNAN.

WJT:lmc

[Endorsed]: Filed May 23, 1957. [30]

In the District Court of the United States, Southern District of California, Central Division

In Bankruptcy No. 76,001-WM

In the Matter of:
MONTE G. MASON,

Bankrupt.

Before: Honorable David B. Head, Referee in Bankruptcy.

Heard by: Honorable Ronald Walker, Referee in Bankruptcy.

HEARING RE: MOTION TO SET ASIDE ORDER OF ADJUDICATION

The following is a stenographic transcript of proceedings had in the above-entitled matter before the Honorable Ronald Walker, United States Referee in Bankruptcy, at 340 Federal Building, Los Angeles 12, California, on Tuesday, June 18, 1957, at the 10:00 o'clock a.m. session.

Appearances of Counsel:

For the Bankrupt:
LAWRENCE RITTENBAND, ESQ.

For the Petitioning Creditors:
WILLIAM J. TIERNAN, ESQ. [31]

* * *

Tuesday, June 18, 1957, 10:00 A.M.

The Referee: You may proceed, gentlemen.

Mr. Rittenband: I understand that Mr. Tiernan, who is the attorney for petitioning creditors, is not here.

Mr. Werner: He told me to——

The Referee: You are talking about the Mason matter? I have two matters on the calendar.

Mr. Werner: I am Mr. Werner, your Honor, and Mr. Tiernan is next door, but he told me to proceed with the examination of the witness.

The Referee: I think we will have to hear the

motion to set aside the order of adjudication first. If the order of adjucation is vacated, there will be no foundation for a 21-A examination, so I guess there is nothing we can do but to wait for Mr. Tiernan.

Mr. Werner: He is next door.

The Referee: We will take an informal recess and wait for Mr. Tiernan.

(Recess taken.)

The Referee: Mr. Tiernan, you may proceed.

Mr. Tiernan: If the Court please, I am going to defer this morning to—— [2*]

Mr. Werner: The Court wants to hear the argument on the motion first. I have informed the Court that I am prepared to proceed on the examination.

The Referee: It seems to me, Mr. Tiernan, that we will have to hear the motion to vacate the adjudication first. Otherwise, there is no foundation for the other two items that are on the calendar.

Mr. Tiernan: Irrespective of the status of the adjudication, we have an unquestioned right to the examination of Mrs. Mason, whether he is adjudicated or not.

The Referee: I suppose so, yes.

Mr. Tiernan: We have a right to examine under the rules, to take depositions or to examine under Section 21 of the Bankruptcy Act.

The Referee: Are you prepared to proceed on it?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Tiernan: On the motion, your Honor?

The Referee: Yes. I will hear that matter first. I guess you have the laboring oar on that.

I was talking about it with Referee Calverley, and he mentioned a letter which had passed between you two attorneys.

Mr. Tiernan: Yes.

Mr. Rittenband: I have the original of the letter here. If I may approach the bench——

The Referee: Do you want to introduce it? [3]

Mr. Rittenband: Yes.

The Referee: All right. I will hear from you.

Mr. Rittenband: I should like to first give to your Honor a little bit of the background chronologically as to this matter. It may furnish the framework for the motion which I am about to make.

The peition in involuntary bankruptcy was originally filed, I think, sometime in January. The alleged bankrupt then retained me. I have never had an occasion of meeting Mr. Tiernan, although we have mutual friends and we both come from back East. I had the pleasure of hearing about him and knowing about him.

I got in touch with Mr. Tiernan and at the beginning, our relationships were formal with respect to this matter. He very kindly consented to extend the time for me in which to plead in respect to the petition, and a formal stipulation was entered into and it was signed by Referee Head.

Now, on or about January—sometime in January, I made a motion to dismiss the petition on the grounds which are set forth in our notice of motion

and they are now before your Honor. That notice of motion was granted. It was granted particularly on the grounds that the alleged acts of bankruptcy, at least as they alleged them, were not acts of bankruptcy, and there were two petitioning creditors instead of three. [4]

The petitioning creditors had 20 days to file an amended petition.

I think that order, or that motion was granted on January 28, and dismissed, so that would be sometime in the middle of February, which would be the time for the amended petition to be filed.

The Referee: The amended petition was filed on March 11.

Mr. Rittenband: That is correct. I think the motion was granted on January 28. I just point it out to indicate that there had not been this strict adherence to the days that they have to file an amended petition or that we have to file an answer to that amended petition, and on the telephone I called Mr. Tiernan on one or two occasions and said to him that I had not yet received his amended petition and the time had expired. He asked me my indulgence. I granted him that request, to take as long as he liked.

Then, on March—I think it was about March 11, the amended peition was filed.

Now, without a formal stipulation, which we had previously had, I asked Mr. Tiernan again on the telephone to extend my time to move with respect to the petition, and under date of March 15, 1957, I wrote to Mr. Tiernan, and I told him I had been

on trial in the Superior Court all week and I would be similarly [5] occupied and unless I heard from him to the contrary, I would assume it would be agreeable to move with respect to the petition in this matter by April 1, 1957.

I received no answer from Mr. Tiernan, so I assumed that that was satisfactory.

Then, on or about April 1, I prepared and filed—maybe the next day—

The Referee: April 2, motion to dismiss.

Mr. Rittenband: That is correct. I filed a Motion to Dismiss the Amended Petition.

It came on for argument before Referee Head and he decided that the amended petition—there were only two acts of bankruptcy alleged. The first act of bankruptcy was that the alleged bankrupt was supposed to have lied in testimony which he gave before a Commissioner in the Superior Court on a supplementary proceedings, which constituted concealment within a four-month period of his interest which he had in certain property belonging to his wife.

The second ground was, namely, that there had been a preference shown by the alleged bankrupt in paying $300 a month under a Court order in a corporate securities act violation.

The Referee: That has already been ruled upon.

Mr. Rittenband: That has already been ruled upon. That had been decided by Judge Head. [6]

Mr. Tiernan and I went outside and we talked as we had in the past on the possibility of effecting a settlement in this matter.

Mrs. Mason has considerable property and considerable interest in some oil fields in Utah, and it was suggested by Mr. Tiernan that if we can work out some kind of a settlement we would obviate the necessity of going through in bankruptcy. I told him we would be very much interested in doing so and I would talk to Mrs. Mason and see what could be arranged.

Now, I then had 20 days within which to file an amended answer to the amended petition.

The Referee: Your time would have run about the 4th or 5th of May.

Mr. Rittenband: I think it would have been about the 5th of May, that is correct. The 5th of May or the 6th of May.

The Referee: Notice was sent to you on April 23——

Mr. Rittenband: That is correct.

The Referee: ——that the Court had ruled on the 16th.

Mr. Rittenband: So that would be about May 8 or 9.

Mr. Tiernan: No.

Mr. Rittenband: More than that.

Mr. Tiernan: It would be later than that. It [7] is 20 days, your Honor.

The Referee: It depends on whether your time is going to run from the service of the notice of ruling or from the ruling itself.

Mr. Rittenband: Yes, but in any event it is around May 5 or 8.

During this time, I had communicated with—or

in the interim period, I communicated with Mr. Tiernan. I called him up about May 12. Mr. Mason and Mrs. Mason were then in Utah where these wells were located. When they came back, I discussed the matter with them.

On May 12, I called Mr. Tiernan and I told him that I had been told by my clients that Mrs. Mason would be willing to offer some of her stock in the M.G.M. Petroleum Company in payment of all of the obligations which were owing by Mr. Mason, particularly to these petitioning creditors, and he told me that that might be all right.

Then, he wrote me on May 14, 1957, the letter which your Honor has perused.

The Referee: I suggest that you read the whole letter.

Mr. Rittenband: Fine. I would like to preface this by saying that we were already in default and it was known by Mr. Tiernan that we were in default. We [8] had an implied understanding pending these negotiations. He knew we were in default and impliedly permitted the default until we exhausted our negotiations.

The letter reads:

"The proposal that you discussed with me concerning the M.G.M. Petroleum Co., Inc., is definitely of interest to my clients. Before further consideration may be given to this, we need to have the balance sheet and operating statement of the company as well as a description of its capital structure.

"If this is agreeable, please return these docu-

ments, together with a precise offer, and I will take it up with my clients.

"In the meantime, please file your answer to the amended petition, and please advise me of an agreeable date for the production of Mrs. Mason, or I will assume that you prefer to have me subpoena her for her examination.

"Very truly yours,

"WILLIAM J. TIERNAN."

I received that letter on May 15, and on May 15, 1957, I wrote to the Masons and said,

"I enclose herewith a letter from Bill Tiernan. If you have any of the information requested, please forward it to me immediately."

Mr. and Mrs. Mason were still in Utah, and [9] they came back a few days later.

In the meantime, after receiving the letter of May 14, 1957, according to my diary, I was on trial in the Superior Court, which took a few days.

After that trial was concluded, I prepared a draft of the answer. Mr. Mason was still not back to sign the answer.

While I was in the act of preparing the answer, I then received notice of the adjudication by default and also without any previous warning or notice from Mr. Tiernan that that was going to be done or giving me an opportunity——

The Referee: I don't find that in the file here.

Mr. Rittenband: If I may approach the bench, it was dated May 27, 1957—May 20, 1957, which was only five days after the receipt of the letter.

The Referee: I don't know why that does not appear here, but I just haven't found it.

Well, apparently, there has been a mistake made in this file.

Mr. Rittenband: Now, if it please the Court, I don't unfortunately practice bankruptcy law, specially or otherwise. Maybe this is the second matter I have ever had.

My impression is that these adjudications are not self-executed; that some effort must be made by counsel [10] in order to procure an adjudication, particularly in a bankruptcy matter, if the clerk's office does not do that.

If I am wrong, I would like to apologize to Mr. Tiernan. It would seem to me that it must have been as a result of some request made by Mr. Tiernan that this adjudication in bankruptcy, or adjudication was made.

I think on the basis of the foregoing facts, which are adequately documented, that if there was any fault it was my fault and if it was a fault, it was an excusable neglect on my part.

It was never our intention, and Mr. Tiernan knew that, to permit an adjudication by default to be entered in view of the fact that I had strenuously resisted the two petitions that had been filed on the ground that they do not, as a matter of law, constitute acts of bankruptcy.

The Court did agree with me in the first instance. In the second instance, one of the grounds had been sustained.

Now, it was known by the attorney for the peti-

tioning creditors that we intended to resist this bankruptcy right through, or failing an amicable adjustment and settlement of the matter, by payment by Mrs. Mason with the M.G.M. stock. [11]

At the time we entered into negotiations the 20-day period had expired and I had previously myself given oral notice to counsel that the 20 days that he had to file his amended petition had expired and asked him what he wanted to do, and he stated that he desired additional time, which he was given.

When I received this letter of May 14, 1957, which was after the 20-day period in which I had to file an answer to the amended petition, we had these negotiations and when I received the letter on May 15, I proceeded immediately thereafter to write to my client to get the information requested.

At the same time, after I got through with the case I had in court, I prepared a draft of the answer to the amended petition.

I feel that in view of all of those facts, if it please the Court, and in view of the liberal rule that we should have our day in court and be permitted to file a responsive pleading, we are entitled to have our motion to vacate the adjudication granted.

Now, with respect to the law——

The Referee: To what?

Mr. Rittenband: ——to the law, counsel contends in his memorandum that the Referee has no power to set aside an adjudication and cites Remington on Bankruptcy, but that contention I very seriously disagree with. [12]

On the contrary, I think both under the Bank-

ruptcy Act, General Orders and the decisions, the Referee has plenary power to do so ever its own decrees and over its own orders.

As your Honor knows, under the 1938 amendment to the Bankruptcy Act, Section 39 provides with respect to the jurisdiction and powers of Referees that:

"Referees are hereby invested," says the Act, "subject always to a review by the Judge, with jurisdiction to (1) consider all petitions referred to them and make the adjudications and dismiss the petitions; * * * (6) perform such of the duties as are by this Act conferred upon courts of bankruptcy, including those incidental to ancillary jurisdiction, and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided."

There is nothing in the Bankruptcy Act which says that a Referee, once having made an adjudication, losses power or jurisdiction over it, so that consequently, we have got to go to other authorities for the purpose of determining whether or not your Honor, as a Referee in a court of bankruptcy and acting as a court of bankruptcy, has the power over your own decree.

Generally speaking, the rule is in all courts and all jurisdictions that if the court has a power to make [13] a decree, it has a power to amend the decree.

I should like to read to your Honor the language of the various authorities to which I have adverted

in my memorandum. I will at this time also advert to the statements made.

I now cite from Collier on Bankruptcy that:

"A motion or petition to vacate an adjudication of bankruptcy is not a collateral but a direct attack. It is directed to the Court which rendered the adjudication to reconsider its decree because of some equitable ground or jurisdictional defect. This self-corrective device is nowhere expressly authorized by the Act or the General Orders; it is a power inherent in a court of authority."

Then, also, the rule with respect to the vacating of this decree:

"The rule should be liberally construed in granting a motion to set aside a default judgment in order that the case may be tried under its merits."

These are all citations to support those quotations from Collier.

The question is whether or not a motion to set aside a default judgment also applies in bankruptcy, particularly with respect to an adjudication, and there are several cases which are cited in my memorandum to the [14] effect that a motion of this kind covers bankruptcy proceedings except insofar as they are inconsistent with the Bankruptcy Act or the General Orders.

There is nothing inconsistent in the Bankruptcy Act or in the General Orders with the power and the right of a court of equity—I mean, a court of bankruptcy, and your Honor acts as a court of bankruptcy, in setting aside its own decree upon

some equitable ground or on some grounds which may be persuasive.

Now, then, if it please the Court, I should like to read very apposite language from Collier where this entire question is thoroughly reviewed and all the cases discussed:

"Although there has been considerable authority that a Referee, once having made an order, has no power to reconsider to amend or vacate it, the better view seems to be that a Referee, as a Court, has such power. In a well-reasoned decision, Circuit Judge Learned Hand considered and discussed all the authorities then extant on the problem and concluded that the Referee had the same power as any other court to reconsider and amend his orders, despite the fact that such orders are reviewable by the District Judge."

The Referee: You are referring to the Pottasch [15] Bros. Co., Inc., case?

Mr. Rittenband: Yes. Then, in a supplement to this case, the question has been decided by the United States Supreme Court, Pfister vs. Northern Illinois Finance Corp., 317 U.S. 144, which involves the power of a Referee, I think, to review a petition for review, as a matter of fact, or amend a petition for review and an order of review, which it itself had previously entered.

The Court said it had the power to do so; at least, the authors of Colliers so state.

The question is now laid to rest and established law that a Referee has the power to vacate an adjudication made by him. If he has that power, he

has the power also to review an adjudication, since there is no express power in the Bankruptcy Act or in the General Orders giving a Referee the power to review a judgment or decree which he had previously made.

The Referee: I am troubled by the fact that Mr. Tiernan's letter stated that you should go ahead and file your answer.

Mr. Rittenband: Yes, but I needed reasonable time in which to do it, certainly, when I was in the trial in the Superior Court. I was then in the process of drafting this answer and waiting for the Masons to return. They were in Utah where they spend most of their time at these wells which are owned by Mrs. Mason. [16]

The Referee: I am more troubled by the fact that the rule in the Federal Court is tighter than it is in State Courts regarding extensions, even to the extent that sometimes it is ineffective until endorsed by the Court.

Mr. Rittenband: That is correct, your Honor.

The Referee: It seems to me very probable that this order of adjudication was not made at the suggestion of Mr. Tiernan but by the Court itself after the time had elapsed. I may be wrong in that.

Mr. Tiernan: That happens to be the exact situation.

Mr. Rittenband: As I said, I didn't know whether it was self-executing or not.

If it is self-executing, then, the order dismissing the petition after the 20 days expired when the

petitioning creditors had within which to file their amended petition and it hadn't been done——

The Referee: It may be discretionary on the part of the Court to vacate the adjudication, but my point is that the onus, the burden, is on the attorney to comply with the rules of the Court, despite agreement with other attorneys.

Mr. Rittenband: There is no question about that. I was addressing my remarks to your Honor's discretion. If your Honor has the power, which your Honor has, to [17] set aside a default adjudication, then—well, it was a fait accompli. We would not have obtained an order of the Court or an order approving the stipulation extending the time. That is the reason why we are before your Honor.

The question is whether or not under the facts as I have outlined them to your Honor, there is a sufficient equitable ground so your Honor may exercise your discretion in setting aside this adjudication, giving us our day in Court.

The Referee: The equitable ground is a misunderstanding on your part. You were busy on another matter; you relied on past, relaxed attitude.

Mr. Rittenband: That is exactly it.

The Referee: That is the sum total of it.

Mr. Rittenband: We were in default on May 14 when this letter was sent.

On May 15, it was received by me. On the 15th, I couldn't have filed it that day. It has got to be prepared, and with the other matters in the office and the client away, and without being able to verify it——

The Referee: What was the date of adjudication?

Mr. Rittenband: June 20. There was only a period of days which elapsed from which I received the letter.

The Referee: From the time you received the letter, but you had considerably more time since you had the duty [18] of filing it. You had time to do it.

Mr. Rittenband: We had been in negotiations at that time. There wouldn't be any necessity——

The Referee: It was negotiation which the Court had no knowledge of, and apparently, had not been advised of.

Mr. Rittenband: That is true. There is no question that time had expired and that if I was remiss, it is the same sort of remissness that lawyers generally do practice in the Superior Courts and State Courts, and I did not know, because of the fact, as I told your Honor, that I do not practice regularly before the Bankruptcy Court, and it is a lack that I deplore because I think it is extremely interesting —I had assumed, as I do with other lawyers in other matters handled by me for 28 years that——

The Referee: I don't think you have any complaint about Mr. Tiernan here, because this was something the Court would do automatically.

Mr. Rittenband: I have no complaint about him, if it please the Court.

The Referee: There is a complete lack of any showing for request for extension by you.

Now, possibly, the facts you have mentioned will

excuse your lack of meeting that duty, but as far as reliance upon some understanding or lack of understand or tacit understanding with Mr. Tiernan, I don't think [19] that is really involved here.

Mr. Rittenband: Well, then, what I am doing, if it please the Court, is appealing to the Court, assuming even that any implied or implicit or tacit understanding which I had with Mr. Tiernan would not govern, or that there may be some misunderstanding on my part and not on his, and I will ask your Honor's indulgence to permit us to file an answer.

The Referee: Have you filed your proposed answer?

Mr. Rittenband: Yes.

The Referee: I will hear from Mr. Tiernan.

Mr. Tiernan: I am willing to concede that Mr. Rittenband's point concerning the authority of the Court to review and amend—that includes the Court, the Referee—its order as good law.

However, I am still confronted by the authorities and the rulings which are embodied in the points and authorities and which as I think is pretty clearly laid out in Remington's treatise concerning a vacation of an order of adjudication which stands in a special or unique position from the other orders regularly made in the course of the administration of the estate by the Referee.

The Referee: I have had a chance only to glance at these while Mr. Rittenband was talking, but it did occur to me that possibly the powers have been

broadened [20] somewhat since the authorities cited in Remington.

I am far from an authority on the whole history of the Bankruptcy Act, but this case that you cite of Shapiro Holding Corporation is reported in 8 American Bankruptcy Reports, New Series. There is no date——

Mr. Tiernan: Yes.

The Referee: ——but from the volume number, it would be quite old.

Mr. Tiernan: It is a fairly old case. There are cases after the 1938 amendment, however, your Honor, and so far as I can see, they are still good law.

The Referee: That is a matter I will have to determine after I study the authorities. If you will address your remarks to the proper exercise of discretion of the Court——

Mr. Tiernan: Very well.

The Referee: ——assuming I will have jurisdiction, I will appreciate it.

Mr. Tiernan: To begin with, Mr. Rittenband outlined some of the previous history of the pleading stages of this case and the fact that the petitioning creditors had failed to file an amended petition and that Mr. Rittenband had not pressed the point and so forth.

Well, of course, where the ruling on the first petition was concerned, no notice of the ruling had been given by Mr. Rittenband, and, hence, the time did not [21] begin to run until notice of the ruling under the Federal rules.

As to the filing of the answer to the amended petition which was the motion filed by Mr. Rittenband, we did not ever have and I don't think it is contended that we had any understanding that the time would be extended, and, of course, the Court made the adjudication when the answer was not filed.

We had—Mr. Rittenband and I had no conversation concerning negotiations for settlement. I think it would be a little unfair to put the thing in that atmosphere. We had no conversation except one, and that was on the way back from Court at the time of the hearing on the motion to dismiss the amended petition, which was then, of course, denied by Referee Head, and we rode back to the office together and it was at that time only that he discussed this possibility of settlement with me.

When I didn't hear from him a week or ten days later, I wrote him this letter of May 14, because I was afraid the very thing would happen and that he would conclude from the fact that we had discussed a proposal of settlement that he was excused from filing an answer.

This case has been dragging on for some time and I did not want Mr. Rittenband to assume that we were going to permit any delay in this case, because we didn't want any delay. [22]

The Referee: You would have some difficulty, it seems to me, in settling this matter between your your petitioning creditors and the bankrupt anyway——

Mr. Tiernan: Yes.

The Referee: ——to the exclusion of other creditors.

Mr. Tiernan: It couldn't be done.

The Referee: It would be in violation of Section 152 of Title 18.

Mr. Tirenan: That is right. It couldn't be settled, or settled without the knowledge of the Court. We had nothing in the way of any offer or anything.

It was just—well, I could tell you the substance of the conversation.

Mr. Rittenband said, "Would you be interested in some of Mrs. Mason's stock in M.G.M.?"

I said, "Yes, we would be willing to discuss it," and this letter followed setting forth some of the requirements we would need to undertake even the initial negotiations, but I know, as a matter of law, that this proceeding could not be effected certainly without notice of any proposal of that type to all the other creditors.

There is one other thing that I think should be discussed in this matter: Assuming we get past the original jurisdictional point, the question is whether or not Mr. Mason has a valid defense to the petition and whether he can in good faith assert a defense, or is this [23] simply a means of delaying these proceedings?

The Referee: Let me ask a question to show you my own ignorance of this:

Mr. Rittenband has been referring to Mrs. Mason. This name "Monte G. Mason" could either be male or female.

Is it Mr. Mason who is in bankruptcy?

Mr. Rittenband: Yes, it is Mr. Mason who is in bankruptcy.

Mr. Tiernan: Mr. Mason, that is correct.

The Referee: Very well.

Mr. Tiernan: We don't feel that Mr. Mason has a valid defense to this proceeding that may be asserted here or anywhere else. He has been examined at length in supplementary proceedings. He has no property and no assets that we know of.

The claims of the creditors are all solidified by judgments. I think the only grounds Mr. Rittenband has for defense is a technical ground as to whether or not the making of payments to the probation officer or the concealing of property at a supplementary examination constitutes bankruptcy.

That has already been passed upon by Referee Head. I think those are matters that I think only serve to prolong these proceedings.

Now, Mr. Rittenband filed his affidavit in [24] these proceedings, which is the basis, I believe, under the rules, for his motion which is before the Court today.

Now, I see nothing in this affidavit except the legal conclusion that there was inadvertence or some sort of negligence. I don't think it could be termed inadvertence because there is nothing in the affidavit that sets forth anything in the nature on an inadvertence.

The Referee: Thus far, the only thing that appeals to me in Mr. Rittenband's argument is his lack

of familiarity with the Federal Court's strictness in enforcing compliance with the rules.

Mr. Tiernan: Well, it may be. Mr. Rittenband is a lawyer of some years' standing before the Bar, and I don't know what experience he has had, but I think the standards in the Federal Courts are probably not as strict as the ones in the Superior Court.

There are all kinds of liberalities allowed under the Federal rules.

However, once an order of the Court has been made and a motion is directed under Rule 60 of the Federal Rules to vacate that motion, it becomes incumbent upon the lawyer, if it be, or his client, to make a proper showing so as to cause the vacation of that order.

I don't think certainly this affidavit contains anything in the nature of a fact which shows inadvertence or anything except possibly inexcusable neglect, and if [25] Mr. Rittenband wants to file additional affidavits, I won't deprive him of that opportunity.

The Referee: Oh, I think the matter has been pretty well exhausted. I will have to examine these authorities anyway.

I will mark the motion to set aside the order of adjudication submitted.

(Whereupon the hearing on the motion to set aside the order of adjudication was concluded.) [26]

Reporter's Certificate

I, Yoshiye Yamada, official court reporter of the above-entitled court, do hereby certify that the foregoing pages 1 to 26, inclusive, constitute a true and correct transcript of the proceedings had in the above-entitled matter on Tuesday, June 18, 1957, at the 10:00 o'clock a.m. session.

Dated this 30th day of July, 1957.

/s/ YOSHIYE YAMADA.

[Endorsed]: Filed August 5, 1957.

[Title of District Court and Cause.]

ORDER RE MOTION TO SET ASIDE ADJUDICATION

This matter came on regularly to be heard before the undersigned Referee in Bankruptcy in his courtroom in the Federal Bulding, Temple and Spring Streets, Los Angeles, California, on the eighteenth day of June, 1957, at the hour of ten o'clock, a.m., upon the Notice of Motion to Set Aside Adjudication of Bankruptcy and Order to File Schedules filed in these proceedings by the bankrupt, Monte G. Mason and upon the affidavit of Laurence J. Rittenband and upon the counter-affidavit of William J. Tiernan in objection to said motion and upon the Points and Authorities filed by William J. Tiernan, Attorney for Petitioning Creditors, and those filed by Laurence J. Rittenband.

The moving party, Monte G. Mason, appeared through his attorney, Laurence J. Rittenband, the petitioning creditors appeared through their attorney, William J. Tiernan.

The Court having heard argument of counsel and having examined the affidavits on file, as well as the points and authorities, and the Court being of the opinion that the affidavit of Laurence J. Rittenband is insufficient to justify setting aside the Order of [32*] Adjudication heretofore entered and that the moving party has not shown sufficient or adequate grounds for setting aside the order and it further appearing that the bankrupt and his attorney have neglected to file an answer to the Amended Petition in Involuntary Bankruptcy within the time fixed by law and insufficient excuse being shown, good cause appearing:

It Is Ordered that the motion to set aside adjudication of bankruptcy and order to file schedules be and the same hereby is denied.

It Is Further Ordered that the bankrupt, Monte G. Mason, file schedules of his assets and liabilities as well as a statement of his affairs in these proceedings on or before July 2, 1957.

Dated: June 26, 1957.

/s/ RONALD WALKER,
Referee in Bankruptcy.

Received June 25, 1957.

[Endorsed]: Filed June 25, 1957. [33]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

The undersigned Monte G. Mason, also known as M. G. Mason, individually and as alleged bankrupt, and Jeanne R. Mason, hereby substitute William Strong as their attorney of record in the above-entitled matter in the place and stead of Laurence J. Rittenband.

Dated: This 28th day of June, 1957.

/s/ MONTE G. MASON,
Individually, and as Alleged Bankrupt.

/s/ JEANNE R. MASON.

I hereby consent to the above substitution.

Dated: This 2nd day of July, 1957.

/s/ LAURENCE J. RITTENBAND.

The above substitution is hereby accepted.

Dated: This 28th day of June, 1957.

/s/ WILLIAM STRONG.

[Endorsed]: Filed July 2, 1957. [34]

[Title of District Court and Cause.]

PETITION TO REVIEW

To Honorable Ronald L. Walker, Referee in Bankruptcy:

The Petition of Monte G. Mason, respectfully represents:

(1) That your petitioner is the alleged bankrupt herein;

(2) That on the 26th day of June, 1957, an order was made by the referee herein, and filed in this Court, a copy whereof is hereto annexed, marked Exhibit "A," and made a part hereof;

(3) That your petitioner is aggrieved by said order, and prays for a review thereof and complains that the Court committed error in making said order in the following particulars:

(a) That in and by said order, the Court denied to petitioner the opportunity to file an answer to the petition herein and to a trial by jury as to the issue of petitioner's alleged commission of an act of bankruptcy;

(b) That in and by said order, the Court denied petitioner's motion to set aside adjudication of bankruptcy and order to file schedules herein;

(c) That in and by said order, the Court in effect reaffirmed its prior erroneous adjudication of bankruptcy despite the fact [35] that none of the alleged acts of bankruptcy set forth in the amended

petition herein in involuntary bankruptcy, constitute acts of bankruptcy or an act of bankruptcy; and despite the fact that petitioner herein, through no fault of his own, but solely because of the failure of his prior counsel to file an answer as instructed by petitioner, is being deprived, in this Court of Equity, of a jury trial, as the law accords to him, upon allegations in the amended petition charging your petitioner with perjury before the Superior Court of the State of California;

(d) That in and by said order, the Court adjudicated petitioner a bankrupt, whereas petitioner does not desire to rid himself of any of his existing obligations by the process of bankruptcy, but desires and intends to pay to each of his creditors the full amount owed legitimately to each, as soon as possible.

Wherefore, petitioner prays that said Order be reviewed by a Judge of this Court, and that the Referee promptly prepare and transmit to the clerk thereof his certificate thereon, together with a statement of the questions presented, and all the records, papers and files in this case.

Dated: July 3, 1957.

/s/ WILLIAM STRONG,
Attorney for Petitioner.

EXHIBIT "A"

Identical to Order Re Motion to Set Aside Adjudication, see pages 49 and 50 of this printed record.

Affidavit of Service by Mail Attached.
[Endorsed]: Filed July 8, 1957. [36]

[Title of District Court and Cause.]

SUPPLEMENTAL PETITION FOR REVIEW OF ADJUDICATION OF INVOLUNTARY BANKRUPTCY

To Honorable Ronald L. Walker, Referee in Bankruptcy:

The Petition of Monte G. Mason, respectfully represents:

(1) That you petitioner is the alleged bankrupt herein;

(2) That on the 26th day of May, 1957, the petitioner herein was adjudicated a bankrupt.

(3) That your petitioner is aggrieved by said adjudication and prays for a review thereof and complains that the Court committed error in making said adjudication in the following particulars:

(a) That in and by said adjudication on said date, petitioner was denied the opportunity to file an answer to the petition herein and to a trial by jury as to the issue of petitioner's alleged commission of an act of bankruptcy;

(b) That said adjudication is based upon alleged acts of bankruptcy set forth in the amended petition herein in involuntary bankruptcy, which do not in law and/or in fact constitute acts of bankruptcy or an act of bankruptcy;

(c) That petitioner does not desire to be adjudged a bankrupt or to rid himself of any of his existing obligations by the process of bankruptcy but desires and intends to pay to each of his creditors the full amount owed legitimately as soon as possible.

Wherefore, petitioner prays that said adjudication be reviewed by a Judge of this Court, and that the Referee promptly prepare and transmit to the clerk thereof his certificate thereon, together with a statement of the questions presented, and all the records, papers and files in this case.

Dated: July 23, 1957.

/s/ WILLIAM STRONG,
Attorney for Petitioner.

Affidavit of Service by Mail Attached.
[Endorsed]: Filed July 24, 1957. [40]

[Title of District Court and Cause.]

ORDER ON MOTION RE SCHEDULES

This matter came on to be heard before the undersigned, Referee in Bankruptcy, at his courtroom in the Federal Building, Temple and Spring Streets, Los Angeles, California, on the 30th day of July, 1957, at the hour of 10:00 a.m. Mr. William Strong appeared for the bankrupt. William J. Tier-

nan appeared for the petitioning creditors and moving parties.

Motion having been made for an order directing the bankrupt to file schedules in these proceedings and the court having heard argument of counsel, good cause appearing;

It Is Ordered that Monte G. Mason file in these proceedings, on or before August 20, 1957, a schedule of his assets and liabilities as well as a statement of his affairs in the manner and in the form approved by the Supreme Court of the United States.

It Is Further Ordered that the previous order of this Court deferring the time of the bankrupt to file schedules until after hearing on a petition for review be and the same hereby is vacated.

Dated: July 30, 1957.

/s/ RONALD WALKER,
Referee in Bankruptcy.

Affidavit of Service by Mail Attached.
[Endorsed]: Filed July 30, 1957. [42]

In the District Court of the United States
Southern District of California, Central Division
In Bankruptcy No. 76,001-WM

In the Matter of:
MONTE G. MASON,

Bankrupt.

Before: Honorable David B. Head, Referee in Bankruptcy

Heard by: Honorable Ronald Walker, Referee in Bankruptcy

HEARING RE: 1. EXAMINATION UNDER 21-A. 2. HEARING ON MOTION TO DISMISS

The following is a stenographic transcript of proceedings had in the above entitled matter on Tuesday, July 30, 1957, before the Honorable Ronald Walker, United States Referee in Bankruptcy, at his courtroom, Federal Building, Los Angeles, California.

Appearances of Counsel:

For the Bankrupt:
WILLIAM STRONG, ESQ.

For the Petitioning Creditors:
WILLIAM J. TIERNAN, ESQ.

Tuesday, July 30, 1957, 10:00 A.M.

The Referee: I will call the matter of Monte G. Mason.

Mr. Strong, are you here in the Mason matter?

Mr. Strong: Yes, your Honor. I have an answering affidavit.

The Referee: This is in the Mason matter?

Mr. Strong: Yes, sir.

The Referee: Where do we stand in this matter?

Mr. Strong: I have a couple of answering affidavits, but I can't find the originals. They have just

disappeared. Would you mind looking at the copies until I get the originals, your Honor?

The Referee: Maybe I should see what you are answering.

Mr. Tiernan; I think it is a very simple matter today.

The Referee: Mr. Tiernan, you are relying on the affidavit of Mr. Werner?

Mr. Tiernan; The only thing we seek today is a modification of the order of the Court——

The Referee: ——permitting a further 21-A examination.

Mr. Tiernan: I understand that examination is [2*] already scheduled for sometime in September. I simply wanted to advance the date and to require the bankrupt to file his schedule of assets and liabilities, as well as a statement of affairs without waiting for any outcome of any review or appeal.

That matter conceivably could be delayed almost indefinitely.

The Referee: Well, it is true it could, but if the matter of adjudication, or an ultimate ruling on the adjudication is in doubt, I am in some doubt as to whether he should not be required to file schedules. However, I am approaching it with an open mind.

I would be glad to hear argument on it.

Mr. Tiernan: The situation is this: It would seem to me, your Honor——

The Referee: Mr. Tiernan, may I run through these affidavits?

Mr. Tiernan: Please, of course.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Referee: Then, we will know what we are talking about.

Mr. Strong: Mr. Tiernan, will you indicate that I gave you copies of the affidavits?

Mr. Tiernan: I acknowledge receipt of those this morning.

The Referee: Very well. Mr. Tiernan, I will hear from you. [3]

Mr. Tiernan: I want to first argue the question of the filing of the schedules and statement of affairs in this proceeding.

I think it would be a serious situation if the Bankruptcy Court, as well as the creditors of a bankrupt, would have to wait in each case pending an outcome of a review or a possible appeal from an order of adjudication before they could get a look at the assets and liabilities of a man who had been adjudged a bankrupt.

In addition to the rather serious practical problems presented by the situation, I think that Section 7-a-(7) of the Bankruptcy Act imposes an obligation upon a bankrupt within five days after adjudication to file these schedules and statement of affairs.

I don't dispute the authority of the Court to extend such a time for reasonable cause, but I think it is the duty of the bankrupt and I think that the creditors are entitled to it.

Theoretically, this matter could be delayed for several years, and, as a matter of fact, it already has been delayed for sometime through the activities of counsel here.

Now, the order of the Court is presumptively valid. It is a judgment. It is entitled to the same status and standing as any other judgment and it is not [4] automatically stayed or execution thereof deferred, because cousel wishes to take a review.

With respect to the examination of Mrs. Mason, the only thought I had in mind was advancing the date. My understanding was that the examination date had been continued to September, and I am frank to say that I wanted an earlier date for her examination. She has already been ordered by the Court to appear.

The Referee: What was the date?

Mr. Tiernan: September 5 or 6.

The Referee: In setting that date, I was influenced by my calendar and the fact that I expected to be away for a couple of weeks.

Mr. Tiernan: I recall that my transmission broke down that morning, and it delayed me in getting to court. If that was the situation——

The Referee: That was about the earliest date, according to my own calendar. Actually, Referee Head may be back in September and he may want to continue the matter on his calendar. I don't know what the situation will be here. He is now planning to come back around the first of September.

Mr. Tiernan: If that is the situation, the examination date of Mrs. Mason may remain a September date.

As far as the filing of schedules, we would like to have those on file sometime between now and

that [5] September date. That is the purpose of the motion today.

The Referee: Mr. Strong, what have you to say about filing schedules? I granted your motion previously. I would have to vacate that order and make a new order requiring the filing.

Mr. Strong: There doesn't seem to be any useful purpose served in filing schedules, as Mr. Werner wishes to use them for a purpose of his own.

The Referee: Let's leave Mr. Werner out of this. There has been too much of personalities in this.

Mr. Strong: It is his affidavit.

The Referee: I realize it is his affidavit, but there is too much about personalities, because there are a large number of other creditors.

Mr. Strong: Nobody has come forth and made any statements or complaints. It is only Mr. Werner. It is always Mr. Werner.

If your Honor will recall, the purported acts of bankruptcy are acts brought about by Mr. Werner. In a sense, he is the one who brought the supplementary proceedings. Now, he claims the testimony therein is false and that falsity constitutes an act of bankruptcy, the falsity in itself.

The Referee: It was that question which Referee Head ruled on as being an act of bankruptcy.

Mr. Strong: Yes, sir, but basically, addressing [6] myself to the question of filing of schedules, I don't quite see that any purpose would be served at this time in requiring Mr. Mason to file any schedules, if it turns out that the acts of bankruptcy

are not sufficient, and that consequently, the petition and the adjudication should not have been granted.

The Referee: That was my original view of it, but I have been thinking about this matter subsequently and I wonder how it would prejudice Mr. Mason if he were required to file schedules.

Mr. Strong: It is simply, in my opinion, an act which would be of no use to perform if there was no bankruptcy ultimately.

The Referee: True, but if he were adjudged a bankrupt, assuming that the appellate court would throw out the adjudication matter, would it prejudice Mr. Mason?

Mr. Strong: I don't know whether it would prejudice him any. What would be the useful function for the Court or Creditors?

The Referee: I am putting it in reverse. Suppose it is a useful act.

Mr. Strong: Why should the Court require the act—you are putting me on the spot by saying to me: How is this going to hurt you?

I don't understand that a person is required to do things simply because it isn't going to hurt him or [7] is going to hurt him to do it.

The Referee: True, but it will certainly influence the Court's ruling, if it would operate to the bankrupt's prejudice before the matter were finally decided.

There are so few provisions for stays pending reviews of a bankruptcy ruling or ruling of a Bankruptcy Court.

Mr. Strong: May I ask: How does it prejudice the creditors or anybody else if he does not file them? Just what harm is there in the mere filing of the bankruptcy schedules?

The Referee: You are very adroit at answering a question with another question. I take it you can't show how Mr. Mason would be prejudiced.

I will ask Mr. Tiernan whether the creditors would be prejudiced.

Mr. Strong: I will state flatly that I can't see how Mr. Mason can be prejudiced by the mere act of filing a schedule. Obviously, in a schedule, he is required by law to state the truth. That is all he is going to state, so from that standpoint, there cannot be a direct prejudice to him now, but also, I don't see the requirement that he file a schedule unless he is actually a bankrupt and that is the very question that we are challenging here.

I can see something else, that by requiring us to file a schedule here, the creditors are not just [8] interested in the schedules. They are obviously interested in the second step that follows the filing of the schedule. As Mr. Werner has already hinted in his affidavit, by the filing of the schedules, he wants the foundation laid. Then, he can ask for ancillary or whatever type of proceedings he wants in another state.

The minute we file a schedule you are going to have motions to take further steps to which the schedules are a foundation.

The Referee: I think there is no doubt of that.

It may be that creditors are entitled to those schedules for the exact purpose of making such motions.

What is your position, Mr. Tiernan? Are the creditors going to be hurt if he does not file schedules?

I will reverse the question I posed to Mr. Strong.

Mr. Tiernan: Yes, your Honor, for the very reasons that are suggested in Mr. Werner's affidavit.

Let me answer Mr. Strong, if I may, point by point.

In the first place, there are three petitioning creditors. It happens that Mr. Werner is convenient for the execution of affidavits. There are other creditors, and I assure the Court that they are vitally interested in this matter, and with whom I have discussed the case [9] only this morning. One of them also has a judgment for some $45,000.

Now, the second point: The purpose of the filing of schedules is, as Mr. Strong suggests, for further and additional steps just as is taken in any normal bankruptcy case for the discovery and recovery of assets which might belong to this estate which could conceivably be dissipated, lost or in some other way put beyond the control of the creditors.

If he wanted, we would have a qualified officer of this Court installed as trustee pending any appeal or pending anything else. If property is discovered, the Court may make such orders as will protect the bankrupt if he is appealing the order of adjudication.

We have a serious situation here involving the

bankrupt's interest in corporations in another state. We want to institute ancillary proceedings, and the petitioning creditors are going to bear all of this expense themselves. All they want is the opportunity.

At such time as we apply to this Court for relief by ancillary proceedings, Mr. Strong may, if he has objections, at that time present them to the Court, but I think this administration ought to proceed orderly in a fashion suggested by the Bankruptcy Act, even though Mr. Strong has filed his Petition for Review of Adjudication, which, by the way, has become final, and to which [10] I filed a motion to dismiss.

I am sure it has become lost because we changed the hearing several times. The order of adjudication has not been appealed. It is only the order on the motion to set aside adjudication. The order of adjudication has not been appealed.

The Referee: Unless Mr. Strong will raise the jurisdictional point.

Mr. Strong: May the record show that I was not counsel at the time the time expired for doing the act he complains of my doing late.

The Referee: You are absolved, Mr. Strong.

Mr. Strong: Just so it is understood.

Mr. Tiernan: I ask the Court to consider this: Why is there all this delay? These things are taken more or less pro forma here in the Bankruptcy Court.

A man is adjudicated a bankrupt. He is ordered

to file his schedules. He files them. A trustee is elected in a matter of two weeks.

Here we have a situation pending since last December. We have had an order of adjudication back final in some part of June. It is now crowding August. We have yet to conduct a full examination of his wife. We have not had the pleasure of examining Mr. Mason yet.

I ask the Court to consider why these delays and why the aggressive interest of counsel in preventing a [11] simple act required by Section 7 of the Bankruptcy statute, that is, the filing of his schedules after adjudication. These are things, I think, that should move the Court, as well as the bare legal necessity and it is required by the law and the rights of the creditors to pursue their remedies.

He says these creditors, the affidavits indicate that these people are just trying to annoy him and his wife to death. These people are all judgment credits, if the Court please. They have judgments of many years' standing, so it is evident that Mr. Mason is not going to pay any of these claims without a certain amount of pressure.

The Referee: Well, it is, at least, evident that no love is lost between Mr. and Mrs. Mason and Mr. Werner.

Mr. Strong: No.

May I say just one or two words. I just wanted to say that Mr. Tiernan and the Court both know that I am always aggressive in the protection of my clients' rights. I don't believe I am doing anything improper in this case.

Mr. Tiernan: Oh, no, not at all.

Mr. Strong: Your Honor, I think that the basic question here, of course, is whether or not this man is a bankrupt. If the man is not to be adjudicated a bankrupt, then, of course, this Court has no jurisdiction to take [12] any of the steps involved here. Without going into these affidavits, I think your Honor can glean from them that there has been some ill feeling between these parties, as you have indicated, but more than that, my clients, at least, feel that this is all being used as a technique to cause Mrs. Mason to give up her separate property to Mr. Werner and to other creditors for the purpose of satisfying their demands, which are just against Mr. Mason.

The Referee: That may be so. If I accept that as a premise, Mr. Strong, it still would not follow that an end would not be served by Mr. Mason filing a schedule of his assets and liabilities.

Mr. Strong: I would like to point this out to your Honor, that if Mr. Tiernan says it is a simple matter, my client might be somewhat unusual in that he does not want to be adjudged a bankrupt.

He does not want to be relieved of his obligations. He wants an opportunity to pay them even though certain persons are trying to force him to pay, without any assets, at the present time.

He has indicated several times to Mr. Tiernan, I believe, and to other persons involved that when he has the money he is going to pay everybody 100 cents on the dollar. He will not be required to be adjudicated a bankrupt. [13]

The Referee: From your statement just made, I would assume he is not in a position to pay and is, therefore, insolvent and a bankrupt.

Mr. Strong: He may be insolvent, but our position is he has not committed any acts of bankruptcy. Therefore he is not a bankrupt. We have already indicated in the petition the grounds for that.

I don't want to reargue that, but the entire situation here, as far as I can see, is directed toward getting Mrs. Mason's separate property in the corporations and the various properties that she owns. Obviously, Mrs. Mason's property is not subject to the claims of creditors of Mr. Mason, unless it is shown to be community property and we claim it is not, so that all we are trying to do at this time is to prevent a multiplicity of petitions and a lot of running back and forth in court where they are going to file other papers, making additional demands, all of which we say should not stand until the time that this man has finally been adjudicated to be a bankrupt.

I am going to indicate now for Mr. Tiernan's benefit, of course, as he already knows, I am going to be just as aggressive in opposing the other demands he may make, as I have been in the past, for the reason that I feel Mr. Mason should not be adjudged a bankrupt.

If he is not a bankrupt, none of these other [14] proceedings should take place.

The Referee: I am going to have to be inconsistent. Having already signed an order staying

the time for filing the schedules, I will now vacate that order.

As I said before, Mr. Strong, I am concerned with the lack of provisions for stays and so forth pending a review. I think it would be a more orderly procedure for the Bankruptcy Court to stand behind the order of adjudication and require the schedules to be filed.

This, of course, would be without prejudice to your applying for a stay in the reviewing court. I think perhaps that is a better form for you to make your application, so I will require the filing of the schedules.

When could you prepare an order on that, Mr. Tiernan?

I am thinking about enough time to make an application.

Mr. Tiernan: I can prepare that today and will do so.

The Referee: Then, we will make it ten days from——

Mr. Strong: Can we work it out so it happens after August 15, so I can go on a vacation, maybe?

The Referee: I am going on a vacation on August 16.

Mr. Strong: The 16th is a Monday? I am going to be away until the 15th.

The Referee: When are you leaving? [15]

Mr. Strong: I will try to leave Friday.

The Referee: Get the order signed tomorrow. That will give you a couple of days to make your

application. You could set it sometime after you return, I suppose.

Suppose the order provide that the schedules be filed August 20.

Mr. Tiernan: That is all right.

The Referee: This other matter is set for September what?

Mr. Tiernan: It was the 5th or the 6th.

The Referee: I have it on the 3rd.

Mr. Tiernan: 3rd, that is the day after Labor Day.

The Referee: Then, if Mr. Strong's motion is denied in the District Court, that will still give you access to the schedules before the other hearing.

Mr. Tiernan: Yes. Now, your Honor, there is, as I say, a motion filed which evidently became lost, and actually, Mr. Strong hasn't had the requisite time to——

Mr. Strong: That is all right, Mr. Tiernan.

The Referee: The motion for what?

Mr. Tiernan: The motion to dismiss the petition.

Mr. Strong: I don't think it is in the right court. Shouldn't it be in the other court?

The Referee: That is something that always bothers me, because we are required to certify a record on a petition for review whether it is timely or not [16] timely, in our opinion. We certify it downstairs, and we go on from there. You had better renew your motion.

Mr. Tiernan: It could be either place, but I have no objection to making it before the District Court. I will re-urge it on appeal.

Mr. Strong: It is the same record.

The Referee: Very well. We will stand in recess.

(Whereupon the hearing was adjourned.)

* * *

Reporter's Certificate

I, Yoshiye Yamada, official court reporter of the above entitled Court, do hereby certify that the foregoing pages 1 to 17, inclusive, constitute a true and correct record of the proceedings had in the above entitled matter on Tuesday, July 30, 1957, at the 10:00 o'clock a.m. session.

Dated this 31st day of July, 1957.

/s/ YOSHIYE YAMADA.

[Endorsed]: Filed Aug. 5, 1957. [18]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable William Mathes, Judge of the United States District Court, Southern District of California, Central Division:

I, Ronald Walker, Referee in Bankruptcy in the above-entitled Court, do certify as follows:

This proceeding is for a review of my order denying the motion of the bankrupt to set aside the adjudication in bankruptcy. The proceedings leading to this review are as follows:

I.

Statement of the Case

(1) On December 27, 1957, a Petition in Involuntary Bankruptcy was filed by Erwin P. Werner, and United States Credit Bureau, Inc., alleged creditors of the bankrupt.

(2) Certain preliminary motions were heard before Referee David B. Head resulting in an amended Petition in Involuntary Bankruptcy being filed on March 11, 1957. In the amended petition an additional creditor appeared, one [44*] Helen Pantaleoni. The acts of banruptcy alledged in the amended petition are set forth in paragraph 4 therein, and in substance are as follows:

(a) In supplementary proceedings upon a judgment in the Superior Court of Los Angeles County on December 6, 1956, the alleged bankrupt concealed property and interests in property with intent to hinder, delay and defraud his creditors, charging the concealment was by falsely testifying as to his interest in certain property at said supplemental proceeding.

(b) The alleged bankrupt in connection with an order of restitution made in a criminal proceeding in the Superior Court of Los Angeles County paid to the probation department the sum of $300.00 on the first days of October, November, and December of 1956, which constituted a preferential transfer under Section 60a of the Bankruptcy Act.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

(3) A motion to dismiss the amended petition was filed on April 2, 1957, and heard before Referee Head on April 11, 1957. On April 23, 1957, Referee Head ruled on said motion as follows:

(a) "It Is Ordered that paragraph IV A of the amended Petition states a valid Act of Bankruptcy and as to this paragraph the motion to dismiss be and the same hereby is denied."

(b) "And it Is Further Ordered That as to paragraph IV B of the Amended Petition ruling thereon is reserved until the trial of the cause."

(4) On April 23, 1957, notice of such ruling was served upon the alleged bankrupt and his attorney, Laurence J. Rittenband.

(5) No answer or responsive pleading having been thereafter filed to the Amended Petition in involuntary bankruptcy, and the time for filing such responsive pleading [45] having elapsed, Referee Howard V. Calverley, acting for Referee David B. Head, entered an adjudication of bankruptcy on May 20, 1957, and on the same day issued an order to the bankrupt to file schedules within five days.

(6) On May 23, 1957, an answer to said amended petition in bankruptcy was filed.

(7) On the same day, May 23, 1957, the bankrupt filed a notice of motion to set aside the adjudication and the order to file schedules on the ground that the adjudication was entered through "excusable failure of the alleged bankrupt to file a timely answer," referring to the affidavit of Laurence J. Rittenband annexed thereto.

(8) On June 18, 1957, the motion to set aside the adjudication was heard before Referee Ronald Walker in the absence of Referee Head, and was denied. The order to that effect was signed and filed June 26, 1957.

(9) Thereafter, and on July 2, 1957, William R. Strong, Esq., was substituted in place of Laurence J. Rittenband, Esq., as attorney for the bankrupt.

(10) On July 8, 1957, a petition for review was filed and thereafter, and on July 24, 1957, a supplemental petition for review of the order of adjudication was filed. Both the original petition for review and the supplemental petition for review were filed more than ten days after the ruling and were therefore not timely filed. Nevertheless, this matter is now being certified to the District Court under the rule that all petitions for review should be certified regardless of whether they are or are not timely filed.

(11) On July 30, 1957, an order was made requiring the alleged bankrupt to file schedules on August 20, 1957, reserving to the bankrupt the right to apply to the Reviewing Court for a stay of such order. [46]

II.

Reason for Ruling

The petition to set aside the order of adjudication was denied by the certifying referee for the reason that, in his opinion, (1st) there was no excusable neglect shown for the failure to file an answer within the time allowed under the Bankruptcy Act, and

(2nd) there was no showing of a meritorious defense to the said action. In the opinion of the Referee this was a matter entirely within his discretion.

III.

Questions Presented

The questions presented are:

(1) Whether the order of the Referee denying the motion to vacate the adjudication was an abuse of discretion on his part;

(2) Whether the concealment by false testimony at the supplementary proceedings in the Superior Court for Los Angeles County constituted an Act of Bankruptcy. This question was not before Referee Walker on the motion to vacate the adjudication as it had previously been passed on and held to be an Act of Bankruptcy by Referee Head. However, the question is presented upon the review in that it goes to the jurisdiction of the court.

IV.

Documents Accompanying This Certificate

(1) Petition in Involuntary Bankruptcy, filed Dec. 27, 1956.

(2) Amended Petition in Involuntary Bankruptcy, filed Mar. 11, 1957.

(3) Notice of Motion to Dismiss Petition and for More Definite Statement, filed Apr. 2, 1957.

(4) Order on Motion to Dismiss, filed Apr. 23, 1957. [47]

(5) Notice of Ruling, filed April 23, 1957.

(6) Answer to Involuntary Bankruptcy Petition, filed May 23, 1957.

(7) Notice of Motion to Set Aside Adjudication of Bankruptcy, and Order to File Schedules, filed May 23, 1957.

(8) Order Re Motion to Set Aside Adjudication, filed June 26, 1957.

(9) Substitution of Attorneys, filed July 2, 1957.

(10) Petition to Review, filed July 8, 1957.

(11) Supplemental Petition for Review, filed July 24, 1957.

(12) Order on Motion Re Schedules, filed July 30, 1957.

(13) Reporter's Transcript of hearing on June 18, 1957, Re Motion to Set Aside Order of Adjudication, filed Aug. 5, 1957.

(14) Reporter's Transcript of hearing on July 30, 1957, Re Examination under 21A and Motion to Dismiss, filed Aug. 5, 1957.

Dated: August 8, 1957.

/s/ RONALD WALKER,
Referee in Bankruptcy.

[Endorsed]: Filed Aug. 8, 1957. [48]

[Title of District Court and Cause.]

REFEREE'S SUPPLEMENTAL CERTIFICATE ON REVIEW

To the Honorable William Mathes, Judge of the United States District Court, Southern District of California, Central Division:

I, Ronald Walker, Referee in Bankruptcy in the above-entitled Court do certify as follows:

Counsel for the bankrupt has called my attention to an error made in the original Certificate on Review on page 3, line 21 (10), the petition for review was filed on July 8, 1957, instead of on July 3, 1957, as appears in the original certificate.

The comment is made that the original petition for review was not timely filed if more than ten days had elapsed from the ruling. Our clerks' office was closed on July 5, 1957, as was the office of the Clerk of the District Court. The petition for review was mailed to the referee on July 3, 1957, but was not endorsed filed until the following Monday, July 8, 1957, the clerks' office having been closed during the intervening period.

Dated: August 12, 1957.

/s/ RONALD WALKER,
Referee in Bankruptcy. [49]

[Endorsed]: Filed Aug. 12, 1957.

United States District Court for the Southern District of California, Central Division

In Bankruptcy No. 76,001-WM

In the Matter of
MONTE G. MASON, Also Known as M. G. MASON,
Bankrupt.

ORDER ON REVIEW OF ADJUDICATION OF BANKRUPTCY, AND OF REFEREE'S ORDER OF JUNE 26, 1957

Upon the petition for review filed by the bankrupt on July 8, 1957; upon the supplemental petition for review filed by the bankrupt on July 24, 1957; upon the certificate of Referee Ronald Walker filed June 20, 1957, and the supplement to the Referee's certificate filed August 12, 1957; and upon the proceedings had before the Referee as appear from his certificate and the supplement thereto; and it appearing to the court that:

(1) The word "concealed" in § 3a(1) of the Bankruptcy Act [11 U.S.C. § 21(a)(1) (1952)] is not limited in meaning to physical secretion [see: Coghlan v. United States, 147 F.2d 233, 236-237 (8th Cir), cert. denied, 325 U. S. 888, rehearing denied, 326 U.S. 805 (1945); United States v. Zimmerman, 158 F.2d 559 (7th Cir. 1946)]; [50]

(2) The amended petition in involuntary bankruptcy alleges an act of bankruptcy within § 3a(1) of the Bankruptcy Act [11 U.S.C § 21(a)(1) (1952); Cal. Code Civ. Proc. §§ 714, 715; In re Burg, 245 Fed. 173, 178 (N.D.Tex. 1917); In re Gla-

zier, 195 Fed. 1020 (M.D.Pa. 1912); 1 Collier, Bankruptcy Par. 3.103 (14th ed. 1940); 1 Remington, Bankruptcy § 123 (5th ed. 1950); cf. Continental Bank and Trust Co. v. Winter, 153 F.2d 397, 399 (2d Cir. 1946)]; and

(3) The failure of the bankrupt to file a timely answer to the amended petition in involuntary bankruptcy was not due to "mistake, inadvertence, surprise, or excusable neglect," within the meaning of Rule 60(b) of the Federal Rules of Civil Procedure;

It Is Ordered that the adjudication, dated May 20, 1957, and the Referee's "Order Re Motion to Set Aside Adjudication," dated June 26, 1957, are hereby confirmed.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail upon

(1) Referee Ronald Walker,
(2) The attorney for the bankrupt, and
(3) The attorney for the respondent creditors.

November 14, 1957.

/s/ WM. C. MATHES,
United States District Judge.

The Clerk will file issue pro tunc as of Nov. 14, 1957.

/s/ WM. C. MATHES,
U. S. District Judge.

[Endorsed]: Filed Nov. 14, 1957.

Entered Nov. 15, 1957. [51]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Monte G. Mason, the alleged bankrupt herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the within United States District Court confirming an Order of Adjudication of Bankruptcy in these proceedings as well as the Referee's Order re Motion to Set Aside Adjudication, entered in this action on November 14, 1957.

Dated: November 21, 1957.

/s/ WILLIAM STRONG,
Attorney for Appellant.

Affidavit of service by mail attached.
[Endorsed]: Filed Nov. 25, 1957. [52]

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 57, inclusive, containing the original:

Petition in Involuntary Bankruptcy.

Petition in Involuntary Bankruptcy (Amended.)

Notice of Motion to Dismiss Petition and for more Definite Statement.

Order on Motion to Dismiss.

Notice of Ruling.

Answer to Involuntary Bankruptcy Petition.

Notice of Motion to set aside Adjudication of Bankruptcy and Order to File Schedules.

Order re Motion to set aside Adjudication.

Substitution of Attorneys.

Petition to Review.

Supplemental Petition for Review.

Order on Motion re Schedules.

Referee's Certificate on Review.

Referee's Supplemental Certificate on Review.

Order on Review of Adjudication of Bankruptcy and of Referee's Order of June 26, 1957.

Notice of Appeal.

Designation of Record on Appeal.

Statement of Points on Appeal.

B. Two volumes of Reporter's Transcript of Proceedings had on June 18, 1957, and July 30, 1957.

I further certify that my fee for preparing the foregoing record, amounting to $1.60 has been paid by appellant.

Dated: December 12, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk;
By /s/ WM. A. WHITE,
Deputy Clerk. [53]

[Endorsed]: No. 15811. United States Court of Appeals for the Ninth Circuit. Monte G. Mason, Appellant, vs. Ernest Utley, Trustee in Bankruptcy of the Estate of Monte G. Mason, Also Known as M. G. Mason, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed December 6, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
in and for the Ninth Circuit
No. 15811

MONTE MASON,

Appellant,

vs.

UTLEY, et al.,

Respondents.

STATEMENT OF POINTS ON APPEAL

A concise statement of the points upon which appellant intends to rely in this appeal are as follows:

1. That the District Court erred in confirming the adjudication of bankruptcy against appellant.

2. That the Involuntary Petition and Amended Petition does not state any legally cognizable acts of bankruptcy.

3. That the adjudication of the bankruptcy herein is illegal and contrary to the law.

4. That the District Court erred in sustaining the refusal of the Referee in Bankruptcy to vacate the adjudication in bankruptcy to permit appellant to file an answer to the Petition and Amended Petition, to a trial by jury, and to a hearing on the merits.

Respectfully submitted,

/s/ WILLIAM STRONG,
Attorney for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Jan. 20, 1958.